

SENATE BILL NO. 122

INTRODUCED BY D. SHEA

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COOPERATIVE ASSOCIATION LAWS; ELIMINATING THE 40-YEAR LIMIT ON EXISTENCE FOR COOPERATIVE ASSOCIATIONS; ~~ELIMINATING~~ CHANGING THE LIMIT ON THE NUMBER OF PERSONS WHO MAY FORM A COOPERATIVE ASSOCIATION; REMOVING THE MINIMUM REQUIREMENT FOR INITIALLY SUBSCRIBED STOCK; ELIMINATING PRICE LIMITS ON COOPERATIVE ASSOCIATION SHARES; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH FILING FEES COMMENSURATE WITH COSTS; AND AMENDING SECTIONS 35-15-103, 35-15-201, 35-15-203, 35-15-204, 35-15-205, AND 35-15-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-15-103, MCA, is amended to read:

"35-15-103. Powers. (1) Associations formed under this chapter ~~shall be~~ are bodies corporate and politic for the period for which they are organized, ~~not exceeding 40 years~~ which may be of perpetual duration.

(2) ~~Associations~~ An association formed under this chapter may:

(a) sue and be sued;

(b) have a common seal ~~which they~~ that the association may alter or renew at pleasure;

(c) own, possess, and enjoy ~~so much~~ real and personal property ~~as shall be~~ necessary for the transaction of ~~their~~ business and sell and dispose of the ~~same~~ property; and

(d) borrow money and pledge ~~their~~ property, both real and personal, to secure the payment ~~thereof~~ of any borrowed money.

(3) Associations formed under this chapter ~~shall have and exercise~~ all powers necessary ~~and requisite~~ to carry into effect the objects for which ~~they~~ the associations may be formed ~~and such as are,~~ including those powers usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws ~~in relation~~ relating to similar corporations; ~~except so far as the same may be~~ that are not limited or enlarged by this chapter."

1

2 **Section 2.** Section 35-15-201, MCA, is amended to read:

3 **"35-15-201. Incorporation.** (1) Whenever ~~any number of persons, not less than three or more than~~
4 ~~seven, may a person~~ TWO OR MORE persons desire to ~~become incorporated~~ incorporate as a cooperative
5 association for the purpose of trade or of ~~prosecuting~~ carrying out any branch of industry or the purchase
6 and distribution of commodities for consumption or in the borrowing or lending of money among members
7 for industrial purposes, ~~they~~ the person or persons shall ~~make~~ prepare a statement to that effect ~~under~~
8 ~~their hands setting that also sets~~ forth:

9 (a) the name of the proposed ~~corporation~~ cooperative association;

10 (b) its capital stock;

11 (c) its location;

12 (d) the duration of the association; and

13 (e) the particular branch or branches of industry ~~which they~~ that the association intend intends
14 ~~to prosecute~~ carry out.

15 (2) In addition to ~~provisions~~ the items required in subsection (1), the statement of incorporation
16 may also contain provisions not inconsistent with ~~law regarding~~ the liability provisions as set forth in
17 35-1-216.

18 (3) The statement, accompanied by the required filing fee, ~~shall~~ must be filed in the office of the
19 secretary of state as the articles of incorporation of the association. ~~The~~ After receiving the statement and
20 the fee, the secretary of state shall ~~thereupon~~ issue to ~~such~~ the person or persons forming the association
21 a license as commissioners to open books for subscription to the capital stock of ~~such corporation, the~~
22 association at ~~such~~ a time and place ~~as they~~ that the person or persons forming the association may
23 determine, ~~for which he shall receive the fee of \$20."~~

24

25 **Section 3.** Section 35-15-203, MCA, is amended to read:

26 **"35-15-203. First meeting.** As soon as ~~10 or more~~ the initial shares of the capital stock ~~shall be~~
27 have been subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of
28 electing directors, adopting bylaws, and transacting ~~such~~ other business ~~as shall properly come~~ before
29 them. Notice ~~thereof shall~~ of the meeting must be given to each subscriber by ~~depositing same in the post~~
30 office mailing the notice, properly addressed, at least 10 days before the ~~time fixed, meeting.~~ The notice

1 must contain ~~stating~~ the object, time, and place of ~~said~~ the meeting."

2

3 **NEW SECTION. Section 4. Fees for filing, copying, and services.** (1) The secretary of state shall
4 establish by rule fees for filing documents and issuing certificates as required by this chapter.

5 (2) The secretary of state shall establish by rule fees for copying documents, priority handling,
6 transmitting or filing facsimile copies, and providing computer-generated information.

7 (3) The fees prescribed under this section must be reasonably related to the costs of processing
8 the documents and providing the services. The secretary of state shall maintain records sufficient to
9 support the fees established under this section.

10

11 **Section 5.** Section 35-15-204, MCA, is amended to read:

12 **"35-15-204. Issuance of certificate of organization -- effect.** (1) The commissioners shall make
13 a full report of ~~their proceedings~~ the first meeting, including ~~therein~~ a copy of the notice provided for in
14 ~~the preceding section 35-15-203~~, a copy of the subscription list, a copy of the bylaws adopted by the
15 association, and the names of the directors elected and their respective terms of office; ~~which~~ The report
16 ~~shall must~~ be executed by at least a majority of the commissioners and ~~shall must~~ be filed in the office of
17 the secretary of state along with any required filing fee. The secretary of state shall, ~~thereupon~~ upon filing
18 the report, issue a certificate of the ~~complete~~ completed organization of the association; ~~making a part~~
19 ~~thereof a copy of all papers filed in his office in and about the organization and duly authenticated under~~
20 ~~his hand and seal of the state, for which he shall receive the sum of \$20, and thereupon a certified copy~~
21 ~~of said certificate shall be filed in the office of the county clerk in which the principal office of the~~
22 ~~association is located.~~

23 (2) Upon the filing of ~~said certified copy~~ the report of the first meeting and the statement of
24 incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1),
25 the association ~~shall be deemed~~ is considered to be fully organized and may ~~proceed to~~ engage in
26 business."

27

28 **Section 6.** Section 35-15-205, MCA, is amended to read:

29 **"35-15-205. Amendment of articles of incorporation.** At any time after the filing of the certificate
30 of complete organization, the articles of incorporation may be amended. Any amendment of the articles

1 of incorporation ~~shall first~~ must be first approved by two-thirds of the directors and then adopted by a vote
2 of not less than two-thirds of those stockholders voting ~~thereon~~ on the issue at any regular meeting of the
3 stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth
4 ~~such any~~ amendment ~~shall~~ must be executed on behalf of the association by its president or ~~vice-president~~
5 vice president and ~~its corporate seal affixed thereto and attested to~~ by its secretary. ~~Such~~ The certificate
6 ~~and any required filing fee shall~~ must be filed in the office of the secretary of state, who shall ~~thereupon~~
7 issue a certificate of amendment of the articles of incorporation, ~~for which he shall receive the sum of \$10,~~
8 ~~and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which~~
9 ~~the principal office of the association is located."~~

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11 **Section 7.** Section 35-15-401, MCA, is amended to read:

12 **"35-15-401. Classes of stock.** (1) The purchase price of the shares of stock ~~shall not be less than~~
13 ~~\$10 or more than \$5,000 per share~~ must be set by the cooperative association and may be made payable
14 in installments.

15 (2) ~~Every~~ A cooperative association may divide its shares of stock into preferred and common
16 stock. The holders of preferred stock ~~shall have no~~ may not have voting power and ~~shall~~ may not
17 participate in the management and affairs of the association, ~~and the~~ The owners ~~thereof~~ of preferred
18 stock shall share in the profits of the association to the extent ~~of not exceeding 6% per annum on the par~~
19 ~~value thereof~~ determined by the cooperative association. The common stock may be divided into classes
20 of different values, and the owners ~~thereof~~ of the common stock shall share in the profits of the
21 association ~~in proportion to the par value of their shares~~ as determined by the cooperative association.
22 However, the owners of common stock in the different classes ~~shall~~ have the same power and ~~vote~~ voting
23 rights in the association.

24 ~~(3) The stock heretofore issued in classes of different par values by any cooperative association~~
25 ~~is hereby legalized and made valid."~~

26

27 **NEW SECTION. Section 8. Codification instruction.** [Section 4] is intended to be codified as an
28 integral part of Title 35, chapter 15, part 2, and the provisions of Title 35, chapter 15, part 2, apply to
29 [section 4].

30

1 NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that
2 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
3 act].

4 - END -